A **JASPAL KAUR SAUDAGAR SINGH**

v.

BALBIR SINGH JURA SINGH

B HIGH COURT MALAYA, SEREMBAN
AHMAD NASFY YASIN JC
[DIVORCE PETITION NO: 33-28-08]
5 JANUARY 2010

C ***FAMILY LAW:*** *Matrimonial property - Ancillary relief - Whether court may grant ancillary relief after decree made absolute - Prayers for ancillary reliefs found in petition - Ancillary relief sought before decree made absolute - Ancillary relief granted - Law Reform (Marriage and Divorce) Act 1976, s. 76(1), (3)*

D On 1 August 2008 a decree was granted by the High Court dissolving the marriage between the petitioner and the respondent. The court then fixed a further date for the hearing of other ancillary reliefs prayed by the petitioner. However, on 5 February 2009 the respondent applied for and obtained a decree absolute. On
E 10 April 2009 the respondent's solicitors raised an objection to the hearing of the ancillary reliefs prayed by the petitioner on the grounds that the decree had already been made absolute on 5 February 2009. The issue to be determined was whether the court had the jurisdiction to grant ancillary reliefs after the decree had
F been made absolute. Counsel for the respondent submitted that leave to proceed on the ancillary reliefs was required once the decree nisi had been granted.

Held (affirming court's jurisdiction to hear application):

G **(1)** Pursuant to s. 76(1) and (3) of the Law Reform Marriage and Divorce Act 1976, it is clear that an application for ancillary relief must be made at the time when granting a decree of divorce or judicial separation. (para 17)

(2) The prayers for ancillary reliefs formed part of the petition. It
H was therefore irrelevant whether the decree was made absolute or not as prayers for ancillary relief had not been dealt with by the court. It was not that the respondent was not aware of the petitioner's claim in the petition; *Tan Pau Soon v. Lim Beng Choo* (foll); *Manokaram Subramaniam v. Ranjid Kaur Nata Singh*
I (dist). (paras 22 & 23)

(3) The court had the jurisdiction to hear the ancillary prayers sought by the petitioner as it was made before the decree was made absolute. (para 26)

Case(s) referred to:
Manokaram Subramaniam v. Ranjid Kaur Nata Singh [2008] 6 CLJ 209 FC ***(refd)***
Tan Pau Soon v. Lim Beng Choo [1977] 2 SLR 372 ***(refd)***

Legislation referred to:
Divorce and Matrimonial Proceedings Rules 1980, s. 56
Law Reform (Marriage and Divorce) Act 1976, s. 76(1), (2), (3)

For the petitioner - K Indran; M/s Krishna Manian & Indran (mentioning on behalf of M/s Jaswant & Loh for the respondent)

Reported by Amutha Suppayah

JUDGMENT

Ahmad Nasfy Yasin JC:

Background

[1] On 1 August 2008 a decree was granted by the High Court dissolving the marriage between Jaspal Kaur a/p Saudagar Singh hereinafter referred to as "the petitioner" and Balbir Singh a/l Jura Singh (hereinafter referred to as 'the respondent")

[2] This Honourable court after the grant of the decree fixed a further date for the hearing of other ancillary relief prayed by the petitioner.

[3] Thereafter, on 5 February 2009 the respondent on his own accord filed a notice for the decree to be made absolute and subsequently the decree was made absolute on 5 February 2009 .

[4] On 10 April 2009 the respondent's solicitors had raised an objection as to the hearing of the ancillary reliefs prayed by the petitioner as the decree had already been made absolute on 5 February 2009.

[5] Upon calling for and having read the submissions by both the parties, I decided that this court has the jurisdiction to hear the ancillary reliefs. I now state my grounds.

Issue

[6] This Honourable court is faced with an important question as to whether the court has the jurisdiction to grant ancillary reliefs given the circumstances that the decree had been made absolute on 5 February 2009.

A **Respondent's Submission**

[7] The learned counsel for the respondent premised his whole objection on the case of *Manokaram Subramaniam v. Ranjid Kaur Nata Singh* [2008] 6 CLJ 209.

B **[8]** Counsel for the respondent submitted that leave to proceed on the ancillary reliefs is required once the *decree nisi* has been granted.

[9] It was further submitted that leave is still required notwithstanding the fact that there was a pending prayer for the C division of the matrimonial asset in the petition.

[10] Further, it is the respondent counsel's contention that by virtue of the Federal Court case of *Manokaram Subramaniam v. Ranjid Kaur Nata Singh* [2008] 6 CLJ 209, an order for division of matrimonial assets is limited to the time when granting a decree of D divorce or judicial separation and not at a latter stage.

[11] The relevant extracts of s. 76(1), (2), (3) of the Law Reform (Marriage and Divorce) Act 1976 were citied.

[12] The respondent counsel also highlighted the fact that nothing E was done to apply for leave or stay the decree. Eventually it was the respondents who upon his own accord file the relevant cause papers to make the decree absolute.

The Petitioner's Submission

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[13] The petitioner's counsel argued that the ancillary prayers were prayed in the petition for dissolution of marriage at the very on set.

[14] The hearing of the relevant prayers was postponed to an after date.

G

[15] The counsel for the petitioners argued that the facts in this case are clearly distinguishable from *Manokaram*'s case as in our present case the ancillary prayers form part of the petition and in *Manokaram* it was applied for latter.

H **Findings**

[16] I shall first set out clearly the law relating to division of matrimonial properties as encumbered under s. 76(1), (3) of the Law Reform Marriage and Divorce Act 1976.

I

[17] The Malaysian position to s. 76(1) and (3) is clear that an application for ancillary relief must be made at the time when granting a decree of divorce or judicial separation.

[18] If I may quote, His Lordship Arifin Zakaria FCJ at p. 220 of his judgment in the case of *Manokaram*.

> Section 76 of the Act need to be amended to insert the word 'or subsequent to the grant' or words to the like effect in order to cloth the court with necessary jurisdiction to make such order subsequent to the granting of the decree absolute under the current provision of s. 76, I do not think the court has the jurisdiction to grant leave as prayed for by the respondent. It is a cardinal principle of law that the court cannot confer jurisdiction upon itself when none exist.
>
> Finally, I must say that this case clearly demonstrated the harsh result arising from the current provisions of s. 76(1) and (3) of the Act. The words in s. 76(1) and (3) are clear and explicit; it is our duty to give effect to it, for in that case the words of the statue speak the intention of the legislature. If the result is unfortunate, it is entirely a matter within the power of the legislature to take the necessary action to remedy the defects of the law as enacted, and it is not for the courts to usurp the function of the legislature, by straining the meaning of the clear terms of the law seeking to evade the consequences which may ensue.

[19] Be that as it may, the situation in *Manokaram*'s case is different from present case before me. The apex court in *Manokaram* decided against the petitioner as she sat on her rights.

[20] Having said that, I must reiterate the fact that there is no pending application before me as in the case of Manokaram the claim for ancillary reliefs was struck out on 14 September 2000 and a new application was filed after the decree was made absolute on 5 April 2001. The 2nd time around the notice was filed without leave. Thereafter only the 3rd time around the leave and the notice proper was entertained by the High Court which eventually paved the way for an appeal to the apex courts.

[21] The Law Lords of the Federal Court in the case of Manokaran stressed on the point that the courts have no jurisdiction to entertain application for ancillary reliefs after the decree was made absolute. I must highlight here that the situation in *Manokaram*'s case would have been different if the respondent there would have reinstated the application which was struck off on 14 September 2000. In addition to that the respondent in *Manokaram*'s case became the author of her own misfortune by not

A obtaining leave before making such application though it is well settled by virtue of s. 56, of the Divorce and Matrimonial Proceedings Rules 1980 in **sub-s. (2) ... an application for ancillary relief which should have been made in the petition or answer may be made subsequently by the leave of the court** ...
B (Emphasis added).

[22] The present case before me is distinguishable in facts whereby the petitioner had submitted her prayers for ancillary reliefs and it formed part of her petition filed in the very beginning. It is therefore irrelevant here whether the decree is made absolute or not
C as prayers for ancillary relief have not been dealt with by this Honourable Court.

[23] It is not that the respondent in this present case is not aware what his ex-wife is claiming for in the petition. This court
D recognizes the 'clean break' principle whereby there must be finality as to what that can be expected and benefitted from an unsuccessful marriage.

[24] Here, the respondent clearly knows it is not the end of the road yet, as the matrimonial properly must be dealt with before the
E two parties can "call it quits". At the first instance the postponement was granted after the *decree nisi* was granted on 1 August 2008 for the respondent to reply.

[25] To conclude I would say that the case of Manokaram is
F distinguishable from this present case and I, hereby quote with full agreement the case cited by the learned counsel for the petitioner, *Tan Pau Soon v. Lim Beng Choo* [1977] 2 SLR 372:

> where the hearing of the ancillaries had been concluded and the *decree nisi* had been made absolute, the court had no jurisdiction thereafter to
G entertain an application under section 106 ... but where the court had made an interim direction or order the matrimonial assets and postponed the division to a later date, the court could, after the decree was made absolute, make a final order.

[26] For the abovementioned reasons, I decide that this court has
H the jurisdiction to hear the ancillary prayers sought by the petitioner as it was made before the decree was made absolute. I hereby fix 13 November 2009 for the hearing of the ancillary prayers. Accordingly I make no order as to costs.

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